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July 22, 2002

**VIA ELECTRONIC FILING**

Ms. Marlene Dortch  
Secretary  
Federal Communications Commission  
The Portals  
445 12th Street SW  
Washington DC 20554

Re: CC Dockets No. 96-45, 98-171, 90-571, 92-237, 99-200, 96-116,  
98-170, and NSD File No. L-00-72.

Dear Ms. Dortch:

In conjunction with the Commission's June 21st Public Meeting to discuss universal service funding proposals, a series of follow-up questions were posed by Commissioner Rowe of the Montana Public Service Commission. Attached are the responses provided by SBC to Commissioner Rowe and the remaining members of the Federal-State Joint Board on Universal Service.

In accordance with Section 1.1206 of the Commission's rules, this letter and the attached responses are being filed in each of the above referenced dockets via the Commission's ECFS system.

Should you have any questions about the attached, please feel free to contact me at (202) 326-8859.

Sincerely,

A handwritten signature in black ink, appearing to read "J. M. Tan". The signature is written in a cursive, flowing style with a long horizontal stroke at the end.



Donald E. Cain  
Vice President-Federal Regulatory

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July 19, 2002

The Honorable Bob Rowe  
Commissioner  
Montana Public Service Commission  
1701 Prospect Avenue  
P.O. Box 202601  
Helena, MT 59620-2601

Dear Commissioner Rowe,

SBC appreciates the opportunity to provide you further input regarding the various proposals discussed in the FCC's Public Meeting regarding the reform of the federal universal service funding mechanism. We believe that the Joint Proposal of SBC and BellSouth represents a more reasonable alternative to the Coalition for Sustainable Universal Service (CoSUS) proposal to resolve the various problems raised in the FCC's current proceeding. Attached are SBC's responses to the various follow-up questions that you had posed to all the parties in attendance as well as those posed specifically to SBC.

Should you have any questions regarding our responses, please feel free to contact me.

Sincerely,

A handwritten signature in dark ink, appearing to read "Donald E. Cain", written in a cursive style.

Cc: Ms. Kathleen Q. Abernathy, Commissioner - Federal Communications Commission, and  
Federal Chair - Federal-State Joint Board on Universal Service  
Mr. Michael J. Copps, Commissioner - Federal Communications Commission  
Mr. Kevin J. Martin, Commissioner - Federal Communications Commission  
Mr. Thomas Dunleavy, Commissioner - New York State Public Service Commission  
Ms. Lila A. Jaber, Commissioner - Florida Public Service Commission  
Ms. Nanette Thompson, Chair - Alaska Public Utilities Commission, and State Chair -  
Federal-State Joint Board on Universal Service  
Mr. Billy Jack Gregg - Director, Consumer Advocate Division of West Virginia

## To All

- **Were it allowed, would you support an assessment on all telecom services revenue (inter- and intra-state combined)?**

No, SBC does not support a contribution mechanism that is based on total (interstate and intrastate) revenues at this time. Conceptually, such a mechanism would address some issues, such as the current wireless safe harbor, because carriers would no longer have to distinguish between interstate and intrastate telecommunications services revenues. However, it would also create new issues. A threshold issue is that a contribution mechanism based on interstate and intrastate revenues is not allowed under current law. As you will remember, the assessment of intrastate revenues for federal funding purposes was rejected by the Fifth Circuit Court of Appeals in *Texas Office of Public Utility Counsel v. FCC (TOPUC)*. In *TOPUC*, the court found that the inclusion of intrastate revenues in the calculation of universal service contributions constituted a charge in connection with intrastate service and, as such, exceeded the FCC's jurisdiction in violation of the statutory provisions of section 152(b). Moreover, allocating federal funding contributions based on interstate and intrastate revenues would not be equitable unless comparable changes were made to state funding mechanisms to require inclusion of interstate revenues. SBC and other ILECs currently are the primary contributors to these state funding mechanisms. Therefore, if state funding mechanisms were not modified, ILECs would be assigned a larger share of the federal funding obligation *and* they would continue to be responsible for the majority of state funding. This would impose an unreasonable burden on ILECs and allow other providers (e.g., IXC's) to avoid making an "equitable and nondiscriminatory" contribution to universal service, as required by the statute.

Moreover, *any* revenue-based contribution methodology will experience problems because the current trend in the market is to provide bundles of services offered at a single price. For example, as a result of the FCC's *CPE Bundling Order*, CPE can be bundled with telecommunications services and many carriers do not have to make the telecommunications service available on a stand-alone basis. Likewise, cable operators and other providers are offering integrated broadband Internet access services without making available a stand-alone transmission service. A recent analyst's report forecasts that these types of service bundles will be increasingly important in the market. A more efficient solution should be implemented that does not rely upon revenue distinctions — such as interstate vs. intrastate and telecommunications services vs. information services — that are difficult to calculate when services are offered as a package or bundle.

In addition, a contribution mechanism based on interstate and intrastate revenues does not address the critical issue of how integrated interstate broadband services will be brought into the universal service contribution base. One of the FCC's priorities should be to eliminate the 7 percent price advantage that cable broadband services have over comparable DSL services simply because cable broadband services are not subject to universal service contributions, whereas DSL services are included in the contribution base. This 7 percent price advantage is significant and harmful, given the highly competitive nature of the broadband market. As previously discussed, a revenue-based contribution mechanism will not easily accommodate integrated broadband cable services where there is no separate stand-alone transmission service. An important benefit of the SBC-BellSouth connection-based contribution proposal (*Joint Proposal*) is that it can easily accommodate broadband Internet access services and other integrated packages of services.

- **Highlight any parts of one another's proposals that you support.**

Similar to the proposals of the IXC Coalition and Sprint, SBC supports replacing the current revenues-based universal service contribution mechanism with a new mechanism that assesses contributions according to the number and capacity of network connections. The *Joint Proposal* addresses the concerns raised by the IXC Coalition and Sprint, and it does so in a lawful manner by allocating contributions across all services that can be used for interstate telecommunications. Consistent with the statutory requirements of section 254(d), a connections-based mechanism must include *all* interstate transport services sold to end users. Moreover, such services should be included in the contribution base whether they are provisioned over the traditional circuit-switched network or a new packet-based network, such as the Internet.

With respect to end user recovery methods, SBC supports the alternative proposal of the Consumer's Union that carriers who choose to recover their universal service obligations via surcharge mechanisms must do so in a uniform fashion via a surcharge, the amount of which should be limited by the FCC. SBC believes that some degree of prescription is required to eliminate carrier gamesmanship and customer confusion.

- **Please evaluate the various proposals in terms of the Bonbright principles for good rate design.**

The *Joint Proposal* represents a balanced approach that accomplishes many of the public policy objectives contemplated by the Bonbright Principles. As discussed below the *Joint Proposal* is not complicated. Further, one of SBC's core design principles for a competitively neutral universal service funding mechanism is that the rules for contribution and recovery should be simple. Complex rules, by their very nature, create opportunities for arbitrage and gamesmanship. Simple rules also help to ensure that consumers understand the circumstances under which they are required to pay universal service recovery charges. While simplicity is an important characteristic, however, it cannot override statutory and public policy considerations. For example, the FCC cannot ignore section 254(d) for the sake of administrative ease.

Moreover, consistent with the Bonbright Principles the *Joint Proposal* addresses the discriminatory price advantage cable services enjoy in the broadband market place because they are not required to make a universal service contribution. The *Joint Proposal* also expands the base of contributors, rather than shrinking the base as the IXC Coalition recommends. A larger funding base maximizes the stability of the fund because it is less sensitive to changes in technology and the availability of different types of services that provide customers with similar functionalities. Further, a larger contribution base minimizes the burden imposed on any particular category of providers and their customers.

## To SBC

- **Comment on the modifications proposed by Qwest. (e.g., distinguish transmission-owning ISPs and non-transmission-owning ISPs, modification of the capacity factors).**

Qwest suggested in its Reply Comments that the *Joint Proposal* should be modified to distinguish between ISPs that own transmission facilities versus those that do not. Under the Qwest modification, ISPs would be directly assessed when they own transmission facilities, while ISPs that do not own transmission facilities would be indirectly assessed as they are today. Qwest's modification does not differ significantly from the *Joint Proposal* because non-facilities based ISPs will continue to contribute under either proposal. The difference between the two proposals is whether an ISP's contribution is made directly, based on the ISP's retail relationships with its subscribers, or indirectly, based on the wholesale relationships the ISP maintains with transmission providers. SBC believes that assessment of universal service contributions should be based on the provision of retail interstate services, not on facilities ownership. This is an important characteristic of an efficient contribution methodology because it reduces the likelihood of regulatory arbitrage, which may occur if providers are not comparably assessed. Thus, the *Joint Proposal* treats ISPs like IXC's, where a retail relationship with end users, not facilities ownership, determines an IXC's contribution obligation.

Qwest also suggested that SONET services such as OC48 should be assessed a larger contribution than a DS3 service because the bandwidth capacity of the SONET service is so much greater than a single DS3. SBC agrees that an adjustment may be appropriate to address these types of issues. In this specific case an additional capacity tier could be added or the bandwidth capacity unit application could be adjusted to account for the additional SONET capacity.

- **Is it duplicative to assume assess both transmission and network access?**

No. In fact, the exchange access and interstate transport components are assessed separate contributions under the current revenue-based mechanism. The *Joint Proposal* maintains this construct and extends it to all types of services that provide end users with interstate telecommunications. In so doing, the *Joint Proposal* closes loopholes that exist under the current methodology. Certain providers and their customers will no longer be able to avoid a universal service contribution based on the technology or type of provider selected to deliver service. Even if an assessment on both the transmission and network access were duplicative, it would make more sense to drop the exchange access component. It is the interstate transport component that provides the jurisdictional basis for classifying the access service as interstate. It is also important to remember that the access service, not the interstate transport service, is supported by the universal service fund. Thus, it would not be in the public interest to limit the universal service contribution base only to those services that are being subsidized.

The *Joint Proposal* reflects the market reality that many consumers purchase interstate access and interstate transport from different service providers. In order to ensure an equivalent universal service contribution assessment regardless of whether access and transport services are purchased separately or as a bundle, the *Joint Proposal* assesses individual contribution "units" on each distinct service. That way, providers are neither advantaged nor disadvantaged by bundling services together.

- **Comment on the suggestion that yours is perhaps the most complicated reform proposal.**

Historically, interstate long distance service was the *sole* contributor to universal service at the federal level. Over time, the federal universal service obligation on interstate long distance was reduced when the FCC introduced the federal SLC and most recently by the changes the FCC made to satisfy the Act, which requires all carriers to contribute on an equitable basis. The *Joint Proposal* addresses the IXC's primary concerns about the current revenue-based mechanism by eliminating the lag problem and the problem of calculating contributions when services are bundled or packaged. Yet the IXC Coalition now claims that *any* contribution mechanism that includes them is unacceptable.

The *Joint Proposal* is not complicated for either providers or consumers. IXCs and other providers will be able to calculate its contribution based on basic information about the services that it provides to its own customers. Contrary to the IXC Coalitions' vague assertions, IXCs do *not* need to obtain any additional information from ILECs in order to calculate their contributions. For switched services, an IXC's contribution is based on the total telephone numbers that are presubscribed to the IXC's long distance service — this is basic information that the IXC already has in order to bill its customers.

From a consumer perspective, the *Joint Proposal* works very much like the existing contribution and recovery mechanism, with the added benefits of providing a broader and more stable contribution base. It is not confusing for consumers, who are used to paying USF charge for each retail service they purchase. Indeed, consumers are generally accustomed to paying charges that depend on the number of services purchased and the number of retail relationships established. For example, a consumer may choose to shop at three stores and pay sales taxes at each store, or the consumer may choose to buy everything at one store and pay one larger sales tax amount.

The IXC Coalition boasts about the simplicity of its proposal, but it achieves this simplicity by ignoring one of the most pressing universal service issues facing the FCC — the rapid migration of customers to new technologies and services that are not included in the contribution base. To make matters worse, the IXC Coalition shifts the entire problem of bypass and arbitrage to local access services. As business and high-end residential customers migrate to services outside the contribution base, residential telephone customers will be left holding the bag.

The IXC Coalition also claims that the *Joint Proposal* suffers from the same deficiencies as the federal PICC. However, the IXC Coalition provides little in the way of explanation or evidence to support its claim. To set the record straight, the two most significant design flaws associated with the PICC were the use of class of service distinctions and artificially capping the charge based on these classes of service. These features made the PICC confusing for customers, difficult to implement and caused business customers to seek alternative technologies and service arrangements to avoid the charge. The IXC Coalition's proposal incorporates similar features and thus repeats the design flaws that were inherent in the PICC. Moreover, the public interest benefits of capping the residential contribution are questionable at best because the structure constructs yet another implicit subsidy mechanism by requiring business customers to pay for the residual contribution amount attributable to residential customers. State

commissions and the FCC should be replacing implicit subsidies with explicit mechanisms as required by the Act, not creating new implicit mechanisms.